STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

SprintCom, Inc., Wireless Co., L. P., NPCR, Inc. d/b/a Nextel Partners and Nextel West Corp.'s Petition for Arbitration	)	
	)	Docket No. 12-0550
Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company.	)	

STAFF OF THE ILLINOIS COMMERCE COMMISSION'S REPLY BRIEF

MICHAEL J. LANNON
CHRISTINE F. ERICSON
KIMBERLY J. SWAN

Illinois Commerce Commission
Office of the General Counsel
160 N. LaSalle Street, Ste. C-800
Chicago, Illinois 60601
Phone: (312) 793-2877
Fax: (312) 793-1556
Email: mlannon@icc.illinios.gov
cericson@icc.illinois.gov
kswan@icc.illinois.gov

April 2, 2013

Counsel for the Staff of the Illinois Commerce Commission

Table of Contents

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

SprintCom, Inc., Wireless Co., L. P., NPCR, Inc. d/b/a Nextel Partners and Nextel West Corp.'s Petition for Arbitration	)	
	)	Docket No. 12-0550
Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company.	)	

STAFF OF THE ILLINOIS COMMERCE COMMISSION'S REPLY BRIEF

The Staff ("Staff") of the Illinois Commerce Commission ("Commission" or "ICC"), by and through its counsel, and pursuant to Section 200.400 of the Commission's Rules of Practice (83 Ill. Adm. Code 200.400), respectfully submits this Reply Brief in the above-captioned matter. Staff, AT&T Illinois, and Sprint all filed their respective Initial Briefs ("IB") on March 22, 2013. *See* Staff IB; AT&T IB; Sprint IB. Staff now files this Reply Brief to respond to AT&T Illinois' and Sprint's respective IBs.

I. USE OF INTERCONNECTION FACILITIES

ISSUES 19 AND 20

AT&T Illinois Description of Issue 19: Should the definition of "Interconnection Facilities" reference the FCC's definition of "Interconnection" in 47 C.F.R. § 51.5?

Sprint Description of Issue 19: What are the appropriate definitions of "Interconnection Facilities"?

AT&T Illinois Description of Issue 20(a): Should the ICA state that the Interconnection Facilities available to Sprint at TELRIC prices be limited to those facilities used "solely" for section 251(c)(2) interconnection?

AT&T Illinois Description of Issue 20(b): Should the ICA provide that Interconnection Facilities purchased at TELRIC rates may not be used for 911 and Equal Access trunks?

Sprint Description of Issue 20: What is the appropriate use of Interconnection Facilities provided by AT&T?

Sprint asserts that the FCC has ordered that once interconnection arrangements are used "to exchange some telephone exchange service and/or exchange access traffic," those same arrangements can be used for other traffic as well. Sprint IB at 24 (*citing In the Matter of Connect Am. Fund*, 26 FCC Rcd. 17663, Report & Order & Further Notice of Proposed Rulemaking (2011) ("*CAF Order*") at ¶ 972). Sprint states that, therefore, AT&T's proposed limitation that Interconnection Facilities be used "exclusively" for Section 251(c)(2) Interconnection Traffic cannot be adopted. Staff disagrees. Staff Ex. 2.0 at 36.

In the *CAF Order* to which Sprint cites for support in its initial brief, the FCC indicates that as long as an interconnecting carrier is using the Section 251(c)(2) interconnection arrangement to exchange some telephone exchange service and/or exchange access traffic, Section 251(c)(2) does not preclude that carrier from relying on that same functionality to exchange other traffic with the incumbent LEC as well. *CAF Order* at ¶ 972. However, Staff does not believe this passage bears on this issue. The traffic at dispute under Issues 19 and 20 is E911 and IXC traffic, neither of which is traffic mutually exchanged with the incumbent LEC (i.e., AT&T in this case). As such, the cited passage from the CAF order does not apply. Staff Ex. 2.0 at 46.

Staff agrees that AT&T has the obligation to provide cost-based facilities for interconnection under Section 251(c)(2), but that such an obligation is limited to facilities used *exclusively* for interconnection under Section 251(c)(2). Staff IB at 5; Staff Ex. 2.0 at 41-42. The FCC has said, "competitive LECs will have access to these [entrance] facilities at cost-based rates to the extent that they require them to interconnect with the incumbent LEC's network." *In the Matter of Unbundled Access to Network* Elements, 20 FCCR 2533 (FCC 04-290) at ¶140 (2005) (*hereinafter*, "Triennial Review Remand Order" or "TRRO"); *see Talk America, Inc. v. Michigan Bell Telephone Co. d/b/a AT&T Michigan*, 131 S.Ct. 2254 (2011) (hereinafter, "*Talk America*") at 2265*;* Brief for the United States as Amicus Curiae Supporting Petitioners in *Talk America* at 13.

As Staff has noted, the U.S. Supreme Court has stated that Section 251(c)(2) interconnection facilities are facilities used *only* for interconnection:

> The Commission [FCC] explains that the issue in these cases did not arise until recently—when it initially eliminated unbundled access to entrance facilities in the *Triennial Review Order*. Until then, the Commission [FCC] says, a competitive LEC typically would elect to lease a cost-priced entrance facility under §251(c)(3) since entrance facilities leased under §251(c)(3)could be used for any purpose—*i.e.*, both interconnection and backhauling—but entrance facilities leased under §251(c)(2) can be used only for interconnection. We see no reason to doubt this explanation.

Talk America Decision at 2263-2264 (emphasis added); Staff Ex 2.0 at 41-42.

The FCC explained in its brief to the Supreme Court in *Talk America*:

> The *Triennial Review Remand Order* makes clear that an incumbent is not categorically obligated to make entrance facilities available at cost-based rates. Rather, that obligation [providing entrance facilities at cost-based rates] exists only when entrance facilities are being used as "interconnection facilities."

Brief for the United States as Amicus Curiae Supporting Petitioners in Talk America Decision (*hereinafter*, "*FCC Brief in Talk America")* at 13 (emphasis added); AT&T Illinois Cross Exam Ex. 1 at 13; Staff Ex 2.0 at 41-42.

Moreover, the Commission has previously addressed this issue. In the Access One/SBC arbitration proceeding (Docket No. 05-0442), the Commission determined that SBC must provide transmission facilities at cost-based rates when the facilities are used solely for interconnection (i.e., for the mutual exchange of traffic between the parties):

> The Commission sees the principle question here as whether entrance facilities no longer available as a leased UNE, can be simply reclassified as interconnection facilities if used solely for the purpose of interconnection ILEC/CLEC networks for the mutual exchange of traffic. … ... [T]he Commission agrees with CLECs and Staff that entrance facilities should be available to CLECs [at cost-based rates] if used for the sole purpose of interconnection.

Access One, Inc., et al., Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 with Illinois Bell Telephone Company to Amend Existing Interconnection Agreements to Incorporate the Triennial Review Order and the Triennial Review Remand Order ("Access One"), Arbitration Decision, Docket No. 05-0442 (Nov. 2, 2005) at 43-44 (emphasis added).

Accordingly, AT&T's limiting phrase "exclusively" and "solely" in GT&C Section 2.60 and Attachment 2 Section 3.5.2, respectively, is appropriate. Staff IB at 5-6; Staff Ex. 2.0 at 52-53.

Sprint further argues that there is no legal authority to support the proposition that Interconnection Facilities must link only the parties' "end users" for there to be the mutual exchange of traffic. Sprint IB at 17. Sprint contends that the definition of "Interconnection" in the FCC's rules refers to the linking of "networks" not end users.

Sprint IB at 17. Staff notes, however, that the FCC has made clear that Section 251(c)(2) interconnection is for the mutual exchange of traffic between customers of the parties. Staff IB at 6; Staff Ex. 2.0 at 49-50. Staff witness Dr. Liu discussed this extensively in her testimony. Staff Ex. 2.0, at 49-50. Specifically, the FCC has stated:

> § 251(c)(2) requires incumbent LECs to 'provide . . . interconnection' between their networks and the networks of competitive LECs (CLECs). . . Such linking enables customers of a competitive LEC to call the incumbent's customers, and vice versa.

FCC Brief in Talk America at 3; *see Talk America* at 2254, 2265 (S.Ct. relying on FCC amicus brief)(emphasis added); Staff Ex 2.0 at 49-50.

Notably, the FCC characterizes the objective of Section 251(c)(2) interconnection as enabling customers of a competitive carrier to make calls to or receive calls from customers of an incumbent LEC with which the competitive carrier seeks interconnection under Section 251(c)(2). Section 251(c)(2) traffic is thus necessarily traffic originated from or terminated to end user customers of an incumbent LEC with which the competitive carrier seeks interconnection under Section 251(c)(2). Staff Ex. 2.0 at 50.

Because E911 and equal access (or IXC) traffic is not traffic originated from or terminated to AT&T end user customers and thus not Section 251(c)(2) traffic, neither type of traffic is eligible to ride on cost-based interconnection facilities provided under Section 251(c)(2). Staff IB at 6; Staff Ex. 2.0 at 45-46, 53. The Commission has made clear in the MCI Metro Access Transmission Services, Inc., MCI WorldCom Communications, Inc., and Intermedia Communications Inc., Petition for Arbitration of Interconnection Rates, Terms and Conditions, and Related Arrangements with Illinois Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of

1996, ICC Docket No. 04-0469 (November 30, 2004) ("MCI Arb. Decision"), Sprint should be solely responsible for facilities carrying equal access as well as E911 traffic because these facilities are used by Sprint to provide service to its own customers. Staff IB at 6; Staff Ex. 2.0 at 51-53.

For these reasons, and those set forth in Staff's initial brief and Staff Ex. 2.0, Staff believes the Commission should resolve Issues 19 and 20 in AT&T's favor and reject the language proposed by Sprint, and adopt the language proposed by AT&T, in GTCs Section 2.60 and Attachment 2 Sections 3.3, 3.4, 3.5.2 and 3.5.3. Staff IB at 5; Staff Exhibit 2.0 at 52-53.

ISSUE 21

Sprint Description of Issue 21: What provisions, if any, regarding Interconnection Facility Audits should be included in the Agreement?

AT&T Illinois Description of Issue 21: Should the ICA permit AT&T to obtain an independent audit of Sprint's use of Interconnection Facilities?

Staff recommends the Commission adopt the audit provisions proposed by AT&T Illinois. Staff IB at 7. Sprint states that "AT&T, as the one responsible for installing these facilities, will certainly know which circuits connect the two parties' switches." Spring IB at 26. However, AT&T Illinois states, and Sprint does not dispute, "AT&T Illinois may not always be able to tell from its own records that Sprint is not is (sic) in compliance with the ICA's provisions for the use of Interconnection Facilities." AT&T IB at 26. Staff believes AT&T Illinois could not always know whether Sprint is in compliance, and in fact, has seen this to be the case in a previous dispute over the nature of traffic being delivered to AT&T Illinois from Halo Wireless, Inc. ("Halo"). Staff IB at 8.

Audit provisions are necessary to provide assurance that Interconnection Facilities will be used properly because there can be incentives to use such facilities improperly, and absent audits, the ability to monitor compliance lies largely with the party that may not have an incentive to comply. While Sprint may be proactive in assessing the characteristics of the traffic it sends over leased facilities, some carriers are not always proactive in this regard. *See* Halo, Complaint as to Violations of an Interconnection Agreement entered into under 47 U.S.C. §§ 251 and 252 and pursuant to Section 10-0108 of the Public Utilities Act, Pre-Filed Testimony of Russ Wiseman on Behalf of Halo Wireless, Inc., ICC Docket No. 12-0182 (May 15, 2012) at 32. For these reasons, AT&T Illinois' proposal to include audit provisions within the contract should be adopted. *See* DPL, Issue 21, AT&T Illinois Language.

ISSUE 22

> *Sprint Description of Issue 22: If Interconnection Facility Audits provisions are included in the Agreement, how should disputes regarding Interconnection Facility Audits be resolved?*
>
> *AT&T Illinois Description of Issue 22: If audit provisions are included in the ICA and an audit demonstrates Sprint is not compliant, how should Sprint's non-compliance be addressed?*

AT&T Illinois proposes certain remedial measures, which Staff recommends the Commission accept, that allows AT&T Illinois to assess Sprint for noncompliance at rates that are as high as, and likely higher than, those Sprint would have paid had it ordered circuits appropriate to the traffic types carried (i.e., the amount that AT&T Illinois would have billed Sprint had Sprint ordered the circuit from AT&T Illinois tariffs using the month-to-month rates), that include late payment charges, and that require Sprint to incur audit charges. Staff IB at 9-10; DPL, Issue 22, AT&T Illinois Language. If

this language is accepted, Sprint will be appropriately penalized for identified noncompliance without forced conversion or termination of the circuits. Staff IB at 10; *see* DPL, Issue 22, AT&T Illinois Language. With these provisions in place, however, adding the language in Sections 3.5.5.5.1, 3.5.5.5.3, and 3.5.5.5.6 of the Network Interconnection Appendix is unnecessary, particularly for minor compliance violations. Staff IB at 10.

Therefore, the Commission should reject these provisions (Sections 3.5.5.5.1, 3.5.5.5.3, and 3.5.5.5.6) because they are overly-punitive in that they would force Sprint to convert or disconnect services even in cases where noncompliance is *de minimis* (for example, in cases where a single call was inappropriately routed over the facility on only one occasion). *Id.* at 9.

Instead, the Commission should direct the parties to include language in the Interconnection Agreement which will reserve AT&T Illinois' right to propose, as an amendment to the Interconnection Agreement, additional penalty language, including its proposed conversion and/or discontinuance language, in the event that significant non-compliance is found in any audit and that AT&T Illinois need not wait for repeated or systematic noncompliance. *Id.* at 10-11. Staff further recommends that any disagreement as to what constitutes significant noncompliance should, if the parties cannot otherwise resolve such disagreement, be resolved by the Commission. *Id.* at 11.

Furthermore, Staff continues to recommend that Commission should require AT&T Illinois to revise its language in Section 3.5.5.5.3 of the Network Interconnection Appendix of the Interconnection Agreement to reflect that Sprint only be required to pay for the cost of the audit based on the pro-rata portion of number of circuits found by the

auditor to be non-compliant compared to the total number of circuits, which were the subject of the audit. *Id.* at 12. Staff, however, also recommends that the Commission direct the parties to include language in the Interconnection Agreement which permits AT&T Illinois to seek further recovery, beyond the pro-rate proportions, in the event that significant non-compliance is found in any audit. *Id.* Again, any disagreement as what constitutes significant noncompliance should, if the parties cannot otherwise resolve such disagreement, be resolved by the Commission. *Id.*

ISSUE 24

AT&T Illinois Description of Issue 24(b): Under what circumstances may Sprint use Combined Trunk Groups?

Sprint Description of Issue 24: Should Sprint be required to establish separate Type 2A Equal Access Trunk Groups?

Sprint asserts that it cannot be required to establish separate Type 2A Equal Access Trunk Groups at tariffed rates because Sprint is entitled under Section 251(c)(2) to use Interconnection Facilities at TELRIC rates, not only to carry Sprint's own "telephone exchange service" and "exchange access" traffic, but also to provide "exchange access" to interexchange carriers (IXCs) who wish to reach Sprint's customers. Sprint IB at 27. Staff disagrees. Staff believes that IXC traffic is not traffic originated from or terminated to AT&T end user customers and thus is not Section 251(c)(2) traffic. IXC traffic, therefore, is not eligible to ride facilities obtained at cost-based rates under Section 251(c)(2). Staff IB at 13; Staff Ex 2.0 at 53, 55.

If Sprint elects to carry Section 251(c)(2) traffic and non-Section 251(c)(2) traffic (e.g., IXC traffic) over the same facilities, Sprint is not entitled to obtain facilities at cost-based rates under Section 251(c)(2) to carry such combined traffic. Staff IB at 13; Staff

Ex 2.0 at 64. As Staff explained in the discussion under Issue 13, the FCC has concluded that the term "interconnection" as used under Section 251(c)(2) is "the physical linking of two networks for the mutual exchange of traffic" or as provided in 47 C.F.R. §51.5. Staff Ex. 2.0 at 4. Therefore, Staff recommends that the Commission resolve this issue in favor of AT&T and reject Sprint proposed language, and adopt AT&T proposed language, under Issue 24 (i.e., in Sections 4.2.3, 4.2.4 and 4.2.4.1 of Attachment 2). *Id.*

ISSUE 29 (CARRYOVER)/30/30(a)/30(b)

> *Staff Description of Issue 29 Carryover: The Parties resolved the majority of Issue 29, but did not resolve whether AT&T Illinois' proposed language in 4.8.9 should be included in the agreement. The parties proposed to include this remaining part of Issue 29 with Issue 30.*
>
> *Sprint Description of Issue 30: Should AT&T's language regarding routing of Exchange Access Service Traffic be included in the Agreement?*
>
> *AT&T Illinois Description of Issue 30(a): Should InterMTA Traffic be routed and 1058 billed in accordance with Feature Group D?*
>
> *AT&T Illinois Description of Issue 30(b): Should the ICA state that the parties will abide by the Ordering and Billing Forum's guidelines regarding JIP?*

In the FCC's *CAF Order*, the FCC addressed a dispute regarding interpretation of its IntraMTA rule; the ruling stated that calls between a LEC and a CMRS provider that originate and terminate within the same Major Trading Area ("MTA") at the time that the call is initiated are subject to reciprocal compensation obligations under section 251(b)(5), rather than interstate or intrastate access charges. Staff IB at 15; *CAF Order* at ¶ *1003-1006.* It is conceivable that, if permitted pursuant to the Interconnection Agreement, Sprint could accept traffic from an IXC and deliver it AT&T Illinois for termination to its end user customer, in which case Sprint would be able to avoid certain

switched access charges (e.g., Entrance Facilities charges) that would otherwise be appropriate. Staff IB at 15; Halo, Complaint as to Violations of an Interconnection Agreement entered into under 47 U.S.C. §§ 251 and 252 and pursuant to Section 10-0108 of the Public Utilities Act, Pre-Filed Testimony of Russ Wiseman on Behalf of Halo Wireless, Inc., ICC Docket No. 12-0182 (May 15, 2012) at 32. Sprint should not be permitted to use facilities it acquires from AT&T Illinois to deliver switched access traffic and avoid the transitory switched access regime established by the FCC. Staff IB at 17. Allowing otherwise would impair AT&T Illinois' ability to bill IXC for appropriate access charges. *Id.* Moreover, the FCC has long restricted the ability of carriers to obtain 251(c)(2) interconnection for interexchange purposes, and the *CAF Order* did not change this. *Id.* at 16. To the extent Sprint argues that this is a solution without a problem, Sprint should not object to the inclusion of AT&T Illinois' language if this is the case. *See* Sprint IB at 28.

Sprint argues that the FCC confirmed in the *CAF Order* that carriers providing some telephone exchange or exchange access service can also use the facility for other traffic. *Id.* at 22. The FCC's clarification concerns VoIP-PSTN Traffic. *CAF Order* at 972. As explained by Staff, the circumstances surrounding VoIP-PSTN traffic did not, when the FCC was making its determinations, match those surrounding CMRS-PSTN traffic. Staff IB at 53. Unlike CMRS-PSTN traffic, there was no intercarrier compensation status quo for the FCC to transition from with respect to VoIP-PSTN traffic. *Id.* The fact that the FCC implies that it is appropriate to send VoIP-PSTN traffic over a TELRIC priced interconnection facility does not stand for the principle that a carrier can use interconnection facilities priced at TELRIC to bypass switched access

charges. Again, flash cutting away from switched access charges would be flatly inconsistent with the access charge transition plan adopted in the FCC's *CAF Order*.

Next, AT&T Illinois proposes that the parties agree to abide by the Ordering and Billing Forum ("OBF" or "OBF Resolution"), which Sprint opposes. *Id.* at 21. Staff does not recommend the Commission require Sprint to abide by the OBF Resolution. *Id.* While AT&T Illinois' proposal may cause Sprint to include certain information, specifically the Jurisdictional Information Parameter ("JIP"), in call data records that would assist AT&T Illinois in identifying the jurisdictional nature of a call as either InterMTA or IntraMTA (which could be help ensure traffic is being appropriately routed and rated under the contract), both the feasibility, and cost to Sprint, of including such information in the call data as required by the OBF resolution cannot yet be addressed. *Id.* The OBF Resolution has not been finalized as of this time, as far as Staff is aware. *Id.* Without knowing what the requirements would entail, Staff cannot weigh the benefits against the costs of doing so, and therefore, does not recommend the Commission require Sprint to abide by the OBF Resolution. *Id.* To the extent AT&T Illinois argues that only the final resolution of OBF Issue 2308 would be applicable under the Interconnection Agreement ("ICA") (and not any interim resolution), this is irrelevant to Staff's concerns. AT&T IB at 49; Staff IB at 21. Staff recommends the Commission reject the proposal that it require Sprint to comply with requirements that are unclear at the time the Commission would be requiring it – not that they would be unclear when applied; the Commission should not require compliance with rules which they cannot anticipate, and which the Commission may not support upon completion.

II. POINT OF INTERCONNECTION

ISSUE 16

AT&T Illinois Description of Issue 16: Must Sprint obtain AT&T's consent to Sprint's removal of a previously established POI?

Sprint Description of Issue 16: Must Sprint obtain AT&T's consent to Sprint's designation of a POI at a technically feasible location on AT&T's network or Sprint's removal of a previously established POI?

Sprint argues that there is no lawful basis to give AT&T the right to prevent Sprint from unilaterally disconnecting facilities, rerouting traffic, and decommissioning POIs. Sprint IB at 45. Sprint states that such network engineering is "technically feasible" and so it must be allowed at Sprint's discretion. *Id.* at 45. Staff disagrees. Sprint inappropriately equates the right to establish interconnection at any "technically feasible" point on the incumbent LEC's network with the right to decommission an existing interconnection at its own sole discretion. As such, Staff recommends that the Commission reject Sprint's proposed language in Attachment 2 Section 2.2.1.4. Staff IB at 21; Staff Ex 2.0 at 28-29.

Staff's recommendation is consistent with the Commission's decision in *MCI Arb. Decision* requiring that a carrier either reach an agreement with its interconnecting partner or obtain Commission approval before decommissioning an existing POI. *MCI Arb. Decision* at 88-89.

Sprint asserts that neither AT&T nor the Commission can stand in the way of Sprint's exercise of its right under a tariff to disconnect facilities, subject to any applicable early termination charge. Staff does not believe that the statute confers on Sprint the right to decommission existing POIs at its own discretion. The Commission said that where MCI, in that case, had already established multiple POIs in a LATA, "it shall not decommission them in its sole discretion." *Id.* at 88. In that case, the

Commission acknowledged that it does not prohibit MCI from dismantling established interconnection arrangements in all circumstances. It said that it "shall not be allowed to dismantle any established interconnection arrangement unless it either reaches an agreement with its interconnection partner, or receives Commission approval based upon sufficient justification." *Id.* at 88-89. Staff believes that there is no reason to depart from this finding. Thus, Staff recommends that the Commission resolve this issue in favor of AT&T and reject Sprint's proposed language in Attachment 2 Section 2.2.1.4. Staff IB at 22; Staff Exhibit 2.0 at 28-29.

Sprint asserted that the *MCI Arb. Decision* is not instructive because at that time, the Commission believed "interconnection" did not include any obligations regarding the provision of facilities. Sprint IB at 41. Staff disagrees. The Commission's decision on the issue of decommissioning existing POIs in the *MCI Arb. Decision* was <u>not</u> contingent or conditional on the understanding at the time that the obligation to provide interconnection did not include the obligation to provide interconnection facilities. The fact that the Supreme Court in *Talk America* did not address the issue of decommissioning existing POIs simply means that Sprint is not granted by the Supreme Court in the *Talk America* case the legal right to decommission existing POIs at its own discretion.

Moreover, Sprint suggested in its initial brief that the FCC *CAF Order* would somehow change the basic precept noted in the *MCI Arb. Decision* that decommissioning may not be done at the sole discretion of the competitive provider. Sprint IB at 42. This is incorrect. The FCC CAF Order did not address the issue of

decommissioning existing POIs, nor did it grant Sprint the legal right to decommission existing POIs.

In fact, none of the statute, court/FCC decisions cited by Sprint grants Sprint the legal right to decommission existing interconnections at its own discretion. As such, the Commission has the authority to make a determination in this regard. Staff believes that Sprint has not presented a reason that would require a departure from the Commission's sound principle established in the *MCI Arb. Decision* discussed herein.

ISSUE 17

> *AT&T Illinois Description of Issue 17(a): Should Sprint be required to establish additional Points of Interconnection (POIs) when its traffic to an AT&T Tandem Serving Area exceeds 24 DS1s?*
>
> *AT&T Illinois Description of Issue 17(b): Should Sprint be required to establish an additional Point of Interconnection (POI) at an AT&T end office not served by an AT&T tandem when its traffic to that end office exceeds 24 DS1s?*
>
> *AT&T Illinois Description of Issue 17(c): Should Sprint establish these additional connections within 90 days?*
>
> *Sprint Description of Issue 17: Should Sprint be required to establish additional Points of Interconnection (POIs) when its traffic to an AT&T Tandem Serving Area exceeds 24 DS1s?*

Sprint states that the Commission should reject AT&T's proposal to require Sprint to establish an additional POI whenever traffic to a given tandem or end office exceeds a DS3 threshold. Sprint IB at 47. Sprint argues, among other things, that AT&T presented no facts to prove risks of tandem exhaust and that the law compels the Commission to disregard AT&T's arguments about the costs and benefits of forcing its competitors to build unnecessary facilities. *Id.* Staff recommends that the Commission reaffirm its holding in Docket No. 00-0332 and adopt AT&T's proposed language under Issue 17 (i.e., in Attachment 2 Section 2.2.1.3, 2.2.1.3.1, 2.2.1.3.2, and 2.2.1.3.3) but

with the traffic threshold set at OC-12, instead of 24 DS1s as proposed by AT&T. Staff IB at 23; Staff Exhibit 2.0 at 33-34. Staff believes that the Commission should balance the incumbent LEC's need and ability to protect its network from adverse impacts (such as network or tandem exhaust) and the need not to unduly burden interconnecting carriers.

In Docket 00-0332, the Commission determined that OC-12, which is the equivalent of 336 DS1s or 12 DS3, is the appropriate traffic threshold at which additional POIs should be established. Level 3 Communications, Inc., Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois, Arbitration Decision, ICC Docket No. 00-0332 (Aug. 30, 2000) ("Level 3 Arb. Decision") at 31. AT&T has not presented sufficient evidence to warrant a departure from the Commission's holding or a decrease in the traffic threshold from OC-12 (or 336 DS1s) to 24 DS1s for additional POIs. *Id.* Therefore, Staff recommends that the Commission reaffirm its finding in Docket No. 00-0332 and adopt AT&T proposed language under Issue 17 (i.e., in Attachment 2 Section 2.2.1.3, 2.2.1.3.1, 2.2.1.3.2, and 2.2.1.3.3) but with the traffic threshold set at OC-12, instead of 24 DS1s.

III. INTERCONNECTION FACILITY PRICING AND SHARING

ISSUE 44

> *AT&T Illinois Description of Issue 44: Should the ICA provide that Sprint is automatically entitled, as of the Effective Date of the ICA, to TELRIC based pricing on facilities ordered from AT&T's access tariff?*
>
> *Sprint Description of Issue 44: Should Interconnection Facilities provided by AT&T be priced at cost based (i.e. TELRIC) rates?*

Sprint argues in its initial brief that the FCC explicitly endorsed the concept on which Sprint's position on Issue 44 is founded, that a facility used both for Section 251(c)(2) Traffic and other traffic is an Interconnection Facility, and, thus, must be priced at TELRIC rates. Sprint IB at 52 (*citing* First Report & Order (Local Competition Order) at ¶ 191; *CAF Order* at ¶ 972). This is irrelevant to Issue 44, which is the question of whether Sprint is entitled to cost-based rates for facilities it purchased or leased from AT&T access tariff. With respect to the question of whether the existing facilities (purchased from AT&T's access tariff) should be priced at TELRIC rates even though they were originally ordered under AT&T's tariff, Sprint states that Staff is wrong in the assertion that the Supreme Court decision in the *Talk America* case does not apply to transmission facilities leased from the access tariff. Sprint IB at 53. Staff disagrees.

As Staff has noted, AT&T has the obligation to provide at cost-based rates facilities exclusively used for interconnection under Section 251(c)(2). However, AT&T does not have the obligation to provide such facilities at cost-based rates under its access tariff. Facilities, for interconnection or otherwise, ordered from the access tariff are subject to the rates, terms and conditions of the tariff. Staff Ex. 2.0 at 65-67. Adhering to the proper terms of the tariff is not a charade as Sprint asserts in its initial brief. *See* Sprint IB at 54.

To avail itself of cost-based rates, therefore, Sprint must terminate its lease of interconnection facilities from the access tariff pursuant to the provisions of the tariff and order interconnection facilities pursuant to the ICA. Sprint simply cannot demand cost-based rates for transmission facilities ordered from the access tariff. Staff Ex. 2.0 at 65-

67. Accordingly, Sprint's proposed language in Attachment 2 Sections 3.8 and 3.8.3 should be rejected. Staff Ex. 2.0 at 70.

ISSUE 45

AT&T Illinois Description of Issue 45(a): Should the Interconnection Facilities prices be applied on a "DS1/DS1 equivalents basis"?

AT&T Illinois Description of Issue 45(b): Should the ICA reference specific Commission orders for Interconnection Facilities pricing?

AT&T Illinois Description of Issue 45(c): Should Sprint be entitled to different rates for Interconnection Facilities than those set forth in the Price Sheet without amending the ICA?

Sprint Description of Issue 45: If the answer to V.D.(1) is yes, should Sprint's proposed language governing Interconnection Facilities/Arrangements and rates be included in the Agreement?

Sprint proposes that rates apply on a pro-rata basis, described as a "DS1/DS1 equivalents" basis. Sprint IB at 55. Sprint also argues, *inter alia*, that Sprint should be entitled to the benefit of future Commission modifications of TELRIC rates. *Id.* at 58. Sprint asserts that if Sprint has to seek modification of the Agreement when the Commission re-calculates TELRIC rates, this will create undue delay, and be costly and wasteful. *Id.* Staff disagrees.

As stated in the initial brief, Staff recommends that the Commission reject Sprint proposed DS1/DS1 equivalent pricing standard in Attachment 2 Sections 3.8.2. Staff IB at 25; Staff Ex. 2.0 at 74. Staff explains that the Commission has specifically established TELRIC prices for DS1 and DS3 transport. The Commission's DS1 TELRIC price is not contingent on whether the carrier also purchases a DS1 transport facility that is not eligible for TELRIC pricing treatment (e.g., from access tariff). Staff IB at 25; Staff Ex. 2.0 at 73. Sprint's DS1/DS1 equivalent pricing standard has the effect of

forcing AT&T to provide DS1 interconnection facilities at below cost-rates established by the Commission for a DS1 transmission facility, and therefore, should be rejected. Staff IB at 25; Staff Ex. 2.0 at 72.

In addition, Staff recommends that the Commission reject Sprint's proposed language in Attachment 2 Section 3.8.2.2, which allows it to avail itself of cost-based rates established in future Commission proceedings without amendment to the parties' ICA. Staff IB at 25; Staff Ex. 2.0 at 74. Sprint's assertion that *Talk America* requires what would essentially amount to a floating TELRIC rate (Sprint IB at 58) is not found in the decision and is not supported. Staff believes that an interconnection agreement is a binding contract that specifies the rates, terms and conditions for services provisioned under the contract. Accordingly, neither party should be automatically entitled to different rates without amending the parties' ICA. Staff IB at 26; Staff Ex. 2.0 at 73.

ISSUES 15, 46, AND 47

> *AT&T Illinois Description of Issue 15: Should the POI serve as both the physical and financial demarcation point between the parties' networks?*
>
> *Sprint Description of Issue 15: What is the appropriate definition of the "Point of Interconnection"?*
>
> *AT&T Illinois Description of Issue 46: Should the parties share the cost of TELRIC priced facilities on Sprint's side of the POI?*
>
> *Sprint Description of Issue 46: Should Interconnection Facilities cost be equally shared (50/50 basis)?*
>
> *AT&T Illinois Description of Issue 47: Should Attachment 2 contain billing terms specific to Interconnection Facilities?*
>
> *Sprint Description of Issue 47: Should the Billing Party discount the invoice for Interconnection Facilities by fifty (50%) to reflect an equal sharing of the costs?*

Regarding whether the parties should share the cost of TELRIC priced facilities on Sprint's side of the point of interconnection ("POI"), Sprint argues that AT&T must share in the cost because such cost sharing is mandated by FCC rules and decisions. Sprint IB at 59. Sprint states that its position is directly supported by MAP Mobile Communications, Inc. v. Illinois Bell Telephone Company et al., 24 FCC Rcd. 5582, Memorandum Opinion & Order, DA 09-1065 (May 13, 2009) (hereinafter, "*MAP Mobile"*). Sprint IB at 61. Staff disagrees. As an initial matter, the *MAP Mobile* decision deals with complaints of paging companies against incumbent LECs. The incumbent LECs were accused of violating the FCC's reciprocal compensation rules, not Section 251(c)(2) of the Act or FCC's rules governing interconnection. As such, the case is not relevant to the interconnection issues (i.e., issues of allocating financial responsibility of interconnection facilities on Sprint's side of the POI) in this arbitration proceeding. More specifically, in the *MAP Mobile* complaint case, the ILECs were accused of "unlawfully charging MAP for transport and termination of" the ILEC's traffic and violation of 251(b)(5) of the 1996 Act and Section 51.703(b) of the FCC reciprocal compensation rules. *MAP Mobile* at ¶1, 25.

The FCC in *Map Mobile* found that the ILECs violated Section 201(b) of the 1996 Act and Section 51.703 of the FCC's reciprocal compensation rules. *MAP Mobile* at ¶ 2, 32. In so doing, the FCC did not independently find the ILECs in violation of Section 201(b) of the Act. The FCC noted that violation of Section 51.703 of the FCC's reciprocal compensation rules constitutes a violation of Section 201(b) of the Act. *MAP Mobile* at fn. 93. As discussed in Staff direct testimony, interconnection and reciprocal compensation (i.e., compensation for the transport and termination of traffic) are two

separate issues and subject to different provisions. Staff Ex 2.0 at 17-19. This distinction is significant and appears to be lost on Sprint.

Nevertheless, even if the FCC *MAP Mobile* Decision were to be applied to the interconnection issues in this proceeding, which Staff does not recommend, the *MAP Mobile* Decision is consistent with the Commission's past decisions and Staff's recommendation in this proceeding that each party is financially and physically responsible for facilities on its side of the POI. In particular, it is consistent with the position that Sprint is financially and physically responsible for facilities on Sprint's side of the POI. In the *MAP Mobile* case, the Points of Interconnection between the ILECs and the paging company (MAP Mobile) were at the paging company's paging terminal. *MAP Mobile* at fn. 75. The facilities at issue in *MAP Mobile* were on the incumbent LECs' side of the POI. This is different than the interconnection facilities at issue in this instant arbitration proceeding which are <u>not</u> at the incumbent LEC (AT&T) side of the POI and instead are on the Sprint side of the POI.

The FCC stated in the *MAP Mobile* Decision:

> Nor is there any basis to conclude that the prohibitions in sections of 51.703(b) and 51.709(b) of our rules do not apply in this case. It is undisputed that the direct interconnection facilities at issue were dedicated to the direct transmission of traffic between MAP and SWBT or the Midwest ILECs, and were located within the MTA where the traffic at issue originated. Further, the parties did not have an interconnection agreement that required the POI to be located in a central or tandem office within SWBT's or the Midwest ILECs' networks. Nor is there any evidence in the record establishing that the facilities were used solely to connect facilities within MAP's CMRS networks by, for example, linking MAP's paging terminal with its antenna. <u>As applied to these facts, the Act and implementing Commission rules and orders prohibit SWBT and the Midwest ILECs from charging MAP for the interconnection facilities and services they provided to MAP, to the extent such facilities and services were used to deliver intraMTA traffic originated on their networks to MAP's point of interconnection</u>.

MAP Mobile at ¶ 31 (emphasis added).

Thus, the FCC found that ILECs are prohibited from charging the paging company for facilities and service, which were on the incumbent LEC's side of the POI, used to deliver IntraMTA traffic to the POI. This FCC finding, if applied to the interconnection issues in this instant arbitration proceeding, is consistent with the Commission's past decisions and Staff recommendation in this proceeding that AT&T is financially and physically responsible for facilities on its side of the POI and Sprint is similarly financially and physically responsible for facilities on Sprint side of POI.

Similarly, Sprint attempts to refute Dr. Liu's position on this issue by citing to the FCC decision in In the Matter of TRS Wireless, L.L.C. v. US West Communications, Inc., 15 FCC Rcd. 11166, Memorandum Opinion & Order (2000) (hereinafter, "*FCC TRS Order"*) aff'd sub. nom. Qwest Corp v. FCC, 252 F.3d 462 (DC Cir. 2001). Sprint IB at 62. In that case, however, the incumbent LECs were accused of violating Sections 201(b) and 251(b)(5) of the Act and associated FCC rules, not a violation of Section 251(c)(2) of the Act and the FCC rules governing interconnection as is the case here. *FCC TSR Order* at ¶ 1.

In particular, in the FCC TSR Order, the FCC found that incumbent LECs cannot charge the paging company for facilities or service used to deliver LEC-originated, IntraMTA traffic to the paging carrier's point of interconnection. Specifically, the FCC said:

> The gravamen of many of the Defendants' arguments is that the reciprocal compensation regime established by section 51.703(b) and the Commission's other reciprocal compensation rules do not apply to the Complainants. For the reasons stated below, we reject those arguments and find that the Commission's reciprocal compensation rules, including

> section 51.703(b), are applicable and that the Defendants cannot charge Complainants for the delivery of LEC-originated, intraMTA traffic to the paging carrier's point of interconnection.

FCC TSR Order at ¶18 (emphasis added).

The facilities at issue in the FCC TSR Wireless complaint case were used to carry LEC-originated traffic to the POI and thus were located at the incumbent LEC's side of the POI. This is again different than the interconnection facilities at issue in this proceeding which are not at the incumbent LEC (AT&T) side of the POI and instead are on the Sprint side of the POI.

Most importantly, the FCC explicitly stated in the FCC TSR Order that the paging company is responsible for paying for facilities on its side of the POI:

> In addition, the paging carrier would be responsible for paying charges for facilities ordered from the LEC to connect points on the paging carrier's side of the point of interconnection, such as facilities ordered to connect the paging terminal with its antennas.

FCC TSR Order at fn. 70.

Therefore, the FCC TSR Order decision is consistent with the Commission's past decisions and Staff's recommendation in this proceeding that each party is responsible for facilities on its side of the POI, and in particular, Sprint is financially and physically responsible for facilities on its side of the POI.

As explained in Staff's initial brief, the Commission has repeatedly made the determination that each party should be financially and physically responsible for facilities on its side of the POI. Staff IB at 27; Staff Ex. 2.0 at 12-13. Staff sees no reason for the Commission to depart from its prior decisions on this issue. As such, the Commission should reaffirm the finding that each party should be financially and physically responsible for facilities on its side of the POI. Staff IB at 27; Staff Ex 2.0 at

20. Staff recommends that the following definition of POI, which reflects AT&T's definition of POI (Issue 15) with a minor modification, be incorporated into the parties' Interconnection Agreement:

> GT&C Section 2.88
>
> "Point of Interconnection" ("POI")" *is* a point on the AT&T ILLINOIS network *where Sprint physically links its network with the AT&T ILLINOIS network for the mutual exchange of traffic*. Each Party is physically and financially responsible *for facilities on its side of the POI*.

Staff IB at 27; Staff Ex 2.0 at 20.

Furthermore, Staff notes that Sprint proposed language for Issues 46 and 47 (i.e., in Attachment 2 Sections 3.9, 3.9.1, 3.9.2, 3.9.3, 3.9.3.1 and Pricing Schedule Sections 1.3.2, 1.3.3, 1.4.2) would require AT&T to be financially responsible for facilities on Sprint's side of the POI. Staff Ex. 2.0 at 10-11. Sprint's proposal is inconsistent with the above definition of POI and the Commission's past decisions. Thus, Staff recommends that the Commission reject Sprint's proposed language in Attachment 2 Sections 3.9, 3.9.1, 3.9.2, 3.9.3, 3.9.3.1 and Pricing Schedule Sections 1.3.2, 1.3.3, 1.4.2 (Issues 46 and 47). Staff IB at 27; Staff Ex 2.0 at 20.

ISSUE 49

> *AT&T Illinois Description of Issue 49(a): Should the ICA include AT&T's language to address the interim period between the Effective Date and the implementation of the section 251(c)(2) interconnection arrangements set forth in Attachment 2?*
>
> *AT&T Illinois Description of Issue 49(b): What rates, terms and conditions should apply to convert from the existing interconnection arrangement to the 251(c)(2) interconnection arrangement?*
>
> *Sprint Description of Issue 49: Should AT&T require Sprint to issue ASRs and be allowed to charge Sprint for any billing reclassifications or changes to the existing interconnection arrangements to receive TELRIC-based rates?*

Sprint alleges that TELRIC pricing for Interconnection Facilities can and should be achieved by simply modifying the billing for those facilities. Sprint IB at 63. Staff believes that this is an over-simplification. As pointed out in Staff's initial brief, there are four issues associated with the conversion of the parties' existing interconnection arrangement to a Section 251(c)(2) interconnection arrangement: (i) whether it is necessary to establish contract provisions governing the interim period, if any, during which the parties' existing interconnection arrangement is being transformed or groomed into a Section 251(c)(2) interconnection arrangement; (ii) whether the conversion of special access services or facilities purchased from the tariff at tariffed rates to interconnection facilities purchased from the ICA at cost-based rates constitutes a termination of service as defined in the tariff, and thus, is subject to termination liabilities as provided in the tariff; (iii) whether AT&T is entitled to impose on Sprint nonrecurring charges for work performed for the conversion or whether the conversion should be a non-chargeable event to Sprint; and (iv) whether Sprint must formally request the conversion, via the access service request process, in order to initiate the conversion process. Staff IB at 28; Staff Ex. 2.0 at 79-80.

Staff agrees with AT&T that it is necessary to establish interim provisions to govern the transition period. AT&T's language maintaining the status quo during the transition period appears to be the natural option and thus should be adopted. Staff IB at 28-29; Staff Ex. 2.0 at 89-90, 92. Staff recommends that the Commission adopt AT&T proposed language in GT&C Section 2.99 and Attachment 2 Sections 1.2, including all subsections.

Sprint contends that there are problems with AT&T's proposal to require Sprint to

issue Access Service Requests to "disconnect" the existing circuits, and then order circuits exclusively for Section 251(c)(2) Traffic, before service can begin under the new Agreement. Sprint IB at 64. Sprint argues that chief among these problems is the assertion that the position is based on an erroneous assumption that to be Interconnection Facilities, the facilities must exclusively carry Section 251(c)(2) Traffic. Sprint IB at 64. Sprint contends, therefore, that it should not be required to submit access service requests for the conversion. *Id.*; Sprint Ex. 3.0 at 48. Sprint's contention is unsupported. *See* Staff IB at 29; Staff Ex. 2.0 at 90.

Contrary to Sprint's contention, the conversion is not a price update on (or re-pricing of) the same existing purchases from AT&T's access tariff. Instead, the conversion involves rearrangement of facilities to separate facilities used to carry Section 251(c)(2) traffic from facilities used to carry non-Section 251(c)(2) traffic, termination of existing purchases of special access services from the tariff and new purchases of facilities from the ICA. Staff IB at 30; Staff Ex. 2.0 at 91-92. Thus, Sprint should be required to issue access service requests for the conversion (and be responsible for all costs associated with the conversion, including termination liability as provided in the tariff). Staff IB at 30; Staff Ex. 2.0 at 91-92. Accordingly, Staff recommends that the Commission adopt AT&T proposed language in Attachment 2 Sections 3.5.4.

IV. IP INTERCONNECTION

ISSUES 1, 11, AND 18

> *Sprint Description of Issue 1: Should this Agreement preclude the exchange of Information Services traffic; or, require that traffic be exchanged in TDM format?*

AT&T Illinois Description of Issue 1(a): Should the ICA provide for IP-to-IP interconnection or should it provide that all traffic that Sprint delivers to AT&T under the ICA must be delivered in TDM format?

Joint Party Description of Issue 11: Should terms and conditions regarding IP Interconnection be included in the Agreement?

AT&T Illinois Description of Issue 18: Should the ICA address POIs for IP-to-IP interconnection and, if so, is Sprint's proposed language just and reasonable?

Sprint Description of Issue 18: How and where will IP POIs be established?

The Commission cannot determine whether Sprint's proposal, or any proposal, is compliant with the requirements of Section 251 of the Act or the FCC and ICC rules and regulations implementing it without the details of such a plan. Staff IB at 32. Even to the extent that Sprint was able to show that some type of IP interconnection might be feasible, Sprint did not show the manner in which it proposes to interconnect is technically feasible. *Id.* Sprint could not do so, because Sprint specifically did not present an interconnection plan. *Id.*

As noted by Staff, Sprint, with one exception, has not identified the terms and conditions under which it seeks IP interconnection. *Id. at 31.* Notably, Sprint, for the first time in its IB, has revised the one aspect of its proposal for IP interconnection that it identified in its proposal. Sprint IB at 72. Instead of proposing to interconnect at a number of locations (including out-of-state locations), Sprint now proposes to connect to AT&T Illinois' network at the AT&T Corp. softswitch that supports the AT&T Illinois U-verse operations. *Id.* Despite the revision, this aspect of Sprint's proposal continues to suffer some of the same deficiencies identified by Staff with respect to Sprint's previous proposal. For example, it could give Sprint the right to interconnect with AT&T Illinois at fewer than one point per local access and transport area, a right that goes beyond what

Sprint has under both FCC and ICC rules. Staff IB at 32. This, again, underscores that in order for the Commission to order IP interconnection, the Commission must be presented with an IP interconnection proposal detailed enough to allow the Commission to conclude that the proposal is consistent with the requirements of Section 251 of the Act and the FCC and ICC rules and regulations implementing it.

The determinations that Sprint is asking the Commission to make in this proceeding: a general pronouncement that it is technically feasible to exchange voice traffic subject to Section 251/252 using IP Interconnection and that AT&T Illinois' affiliate IP network elements should be deemed part of AT&T Illinois network, are pronouncements that might or might not be relevant to any later determination on a Sprint interconnection plan. *Id.* at 33.

Moreover, the Commission has never, heretofore, determined that any provider has the right, pursuant to the Act to exchange traffic with an incumbent local exchange carrier ("ILEC") in IP format. *Id.* Nor has the Commission determined the rates, terms, and conditions under which such interconnection must occur consistent with the requirements of Section 251 of the Act or the FCC and ICC rules and regulations implementing it. *Id.* The legal question of whether IP Interconnection can be compelled pursuant to Section 251 is an open one at the FCC. *CAF Order* at ¶ 1389. This is particularly important because the Commission's ability to regulate or otherwise impose obligations on providers using IP protocol outside the confines of its Federal Authority is circumscribed by the Illinois Public Utilities Act, which states:

> Except to the extent expressly permitted by and consistent with federal law, the regulations of the Federal Communications Commission, this Article, Article XXI or XXII of this Act, or this amendatory Act of the 96th General Assembly, the Commission shall not regulate the rates, terms,

> conditions, quality of service, availability, classification, or any other aspect of service regarding (i) broadband services, (ii) Interconnected VoIP services, (iii) information services, as defined in 47 U.S.C. 153(20) on the effective date of this amendatory Act of the 96th General Assembly or as amended thereafter, or (iv) wireless services, including, but not limited to, private radio service, public mobile service, or commercial mobile service, as those terms are defined in 47 U.S.C. 332 on the effective date of this amendatory Act of the 96th General Assembly or as amended thereafter.

220 ILCS 5/13-804 (West 2012). Thus, if the Commission requires AT&T Illinois to interconnect with Sprint in IP format, it must do so under its express Section 252 authority. 47 U.S.C.A. § 252(b). This is a case of first impression for the Commission that must be decided pursuant to Federal law, which the FCC has not yet interpreted. Staff IB at 34; *see* 220 ILCS 5/13-804; 47 U.S.C.A. § 252(b). Therefore, while the Commission might or might not have the authority to order IP interconnection, any such decision it makes will be momentous and the Commission should not and cannot make such a determination until it is presented with an IP-to-IP interconnection of sufficient detail to allow it to assess whether such plan is technically feasible or otherwise comports with the requirements of the Federal Act. Staff IB at 35; 220 ILCS 5/13-804; 47 U.S.C.A. § 252(b).

Similarly, the Commission should not take the momentous step of foreclosing IP interconnection. If the Commission decisively rejects the exchange of traffic in IP format under any circumstance, then parties that rely increasingly on IP protocol in their own networks might be forced to make needless protocol transfers to and from TDM format when exchanging traffic they carry on their own networks in IP format. Staff IB at 35. Therefore, Staff recommends that the Commission should require the parties to include in the Interconnection Agreement language that will allow Sprint (and AT&T Illinois, if it

so desires) to develop language prescribing the rates, terms, and conditions for IP-to-IP interconnection, including those for the transition from TDM-to-TDM to IP-to-IP interconnection, and to petition the Commission for inclusion of its language in the Interconnection Agreement. *Id.*

V. TRANSIT

ISSUE 43

Joint Description of Issue 43: What is the appropriate rate that a Transit Service Provider should charge for Transit Traffic Service?

Nothing in the parties' Initial Briefs convinced Staff to change it position on this issue. Staff, accordingly, continues to recommend that the Commission adopt one of the options Staff recommends below.

AT&T Misunderstood Staff's Position

AT&T mischaracterizes Staff's position. AT&T states that Staff recommends that the "Commission find a way to conclude that transit is required by the 1996 Act in order to serve the public interest." AT&T IB at 131. Although perhaps a plausible interpretation of Staff's pre-filed testimony, it is not an accurate description of Staff's position on Issue 43.

Rather, Staff's position is that general policy reasons, which support the specific provisions of both the federal Communications Act and the PUA, also support the imposition of cost-based rates on AT&T's transit rates under the circumstances of the current market as presented in this Section 251 arbitration. As Staff noted in its IB, Staff's position follows prior Commission precedent. Staff IB at 40-41 (*citing Arbitration Decision*, MCI Telecommunications Corp. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish and Interconnection

Agreement with Illinois Bell Tel. Co. d/b/a Ameritech Illinois, ICC Docket No. 96-AB-006, 1996 WL 33660256 *(Ill. I.C.C. slip op.)* (Dec. 17, 1996) ("1996 MCI Arbitration")).

Ironically, even though AT&T's reading of Commission precedent on transiting would leave the reader convinced that transiting at TELRIC rates could not be required of AT&T, AT&T itself notes that the rates it "proposes to charge Sprint [were] TELRIC based. AT&T IB at 121-122, 120. What AT&T does not disclose is that AT&T was ordered by the Commission to provide TELRIC rates for transiting under the general policy reasons it had established in the 1996 MCI Arbitration. S*ee also Second Interim Order, Investigation into forward looking cost studies and rates of Ameritech Illinois for interconnection, network elements, transport and termination of traffic, ICC docket Nos. 96-0486/0569 (consol.), 1998 WL 34302124 (Ill. I.C.C. slip op.) (Feb. 17, 1998)* (*TELRIC I Order)* at *69-70. Of course, under AT&T's position and theories, it would never have provided a TELRIC compliant rate at all.

Staff's reliance on general policy reasons was recently endorsed by the Third District Appellate Court of Illinois. In *Apple Canyon v. Ill. Commerce Comm'n*, 2013 IL App (3) 100832 (Ill. App. 3d Dist. 2013) ("*Apple Canyon"*) a water rate case, the Court based its conclusions that public comments are a part of the record for decision on general policy reasons articulated by the Illinois General Assembly and contained in Section1-102(d) of the PUA. 220 ILCS 5/1-102(d). For example, the court concluded that in assessing the just and reasonableness of proposed rates:

> [T]he Commission must resolve disputed factual issues, but it must also consider *certain equitable and policy considerations*. For example, the Commission must ensure that consumers are treated fairly (220 ILCS 5/1–102(d) (West 2008)), that "the application of rates is based on public understandability and acceptance of the reasonableness of the rate structure and level" (220 ILCS 5/1–102(d)(ii) (West 2008)), and that "the

> rates for utility services are affordable and therefore preserve the availability of such services to all citizens" (220 ILCS 5/1–102(d)(viii) (West 2008)).

Apple Canyon at ¶ 41.

Section 5/1-102 is entitled "Findings and Intent," which contains the aspirations of the General Assembly regarding the regulation of utilities in general. Section 13-801 of the PUA, entitled "Incumbent local exchange carrier obligations," provides for "additional State requirements contemplated by, but not inconsistent with, Section 261(c) of the federal Telecommunications Act of 1996, and not preempted by orders of the Federal Communications Commission." Sections 13-801(a) and (g), which Staff relies on, have never been preempted.

There Is No Evidence Of A "Robust" Competitive Transit Market

AT&T's unfounded contention that there is a "robust" competitive transit market in which "competition is disciplining prices in the marketplace" should be summarily dismissed. *See* AT&T IB at 119, 137. First, it appears to Staff that AT&T has admitted that Dr. Oyefusi's testimony is simply not relevant to any issue in this arbitration. AT&T states:

> The competitive market for transit service exists in the world of free market negotiation of *commercial* transit agreements in which AT&T Illinois and multiple competing providers of transit service operate – not in the world of regulation in which this arbitration proceeds. . . . .AT&T Illinois has no interest in "competing" to provide transit service via regulated ICAs; that is why the real world competition about which AT&T Illinois' witnesses testified disciplines prices in that competitive realm (in which Sprint is welcome to participate by entering into a separate, commercial transit agreement with AT&T Illinois), but not in this arbitration.

AT&T IB at 119, n. 47.

According to AT&T, there is one market for commercial transit agreements and a completely separate one with regulated agreements, and these two markets never meet. As noted above, AT&T has chosen to compete in only the commercial market, and not the regulated market. In AT&T's formulation, it is only in the commercial marketplace where competitive forces discipline rates, not in the regulated market, which is the market at issue in this proceeding. When Dr. Oyefusi filed his testimony, Sprint was entirely unaware of the AT&T Mobility transit rate agreement. Consequently, as AT&T acknowledges in the quote above, the testimony of Dr. Oyefusi about the competitive commercial market had nothing to do with Sprint in this arbitration, which means the testimony is immaterial and not relevant.

Finally, Dr. Oyefusi also testified that he would expect the AT&T ILECs to make available to Sprint the same rates, terms and conditions for transit service as the AT&T ILECs have made available to AT&T Mobility (Tr. at 771), and *the AT&T ILECs are in fact willing to do exactly that* – in a commercial, negotiated agreement. AT&T IB at 137-38 (emphasis added). Sadly, it appears that this offer was never made, and is meaningless in this context, since it cannot apply to this docket. The distinction between regulated agreements and commercial agreements in the RBOC-CLEC (or wireless provider) context is that AT&T must negotiate and, if necessary, arbitrate regulated agreements. In the commercial context, AT&T is not required to negotiate or agree to any terms or arbitrate anything.

Staff Recommendation

Finally, as noted above, Staff found nothing in either AT&T or Sprint's IBs compelling enough to change its position. Thus, like in its IB, Staff recommends, for

public policy reasons, that the Transit Traffic rate be based upon TELRIC. One way to accomplish that is for the Commission to order the Parties to use a proxy rate. Staff offered, in Dr. Rearden's testimony, several options for the Commission to choose from. Staff Ex. at 18-19. In addition, the rate provided for in the AT&T Mobility commercial agreement with AT&T also appears to be a reasonable proxy. *Tr.* at 768 (stating "about 0.0025 per minute of use"). Moreover, if the Commission prefers, it could order its choice of a proxy rate as an interim rate, pending the outcome of a hearing on whether or not the transit service market in Illinois is competitive or until an updated Illinois specific TELRIC rate can be discerned. On the other hand, if the Commission were to adopt AT&T's proposal and continue to use the current outdated tariffed TELRIC rate (at $0.005034 per MOU), then Staff recommends that the Commission make that an interim rate pending an investigation into directly determining the TELRIC of Transit Traffic Service under current technologies, costs and market conditions.

VI. SECTION 251(b)(5): SCOPE OF INTRAMTA BILL AND KEEP

ISSUE 5

Sprint Description: What is the appropriate definition of "Section 251(b)(5)" tariffs?

AT&T Illinois Description: Should the Agreement contain a definition of Section 251(b)(5) Traffic? If so, what is the appropriate definition?

Staff continues to recommend that Sprint's proposal to include a definition of Section 251(b)(5) Traffic be rejected. Staff IB at 45. Acknowledging and/or clarifying a decision of the FCC is, in and of itself, not a sufficient reason to include the definition in the Interconnection Agreement. *Id.* Furthermore, as discussed in detail in Staff's IB, the Interconnection Agreement will be clearer if aspects of Sprint's definition of "Section

251(b)(5) Traffic" (those that do not cause AT&T Illinois' primary concern, but that are of practical import to the Interconnection Agreement) are included directly in the definitions of "IntraMTA Traffic," "Non-Toll InterMTA Traffic," and "Toll InterMTA Traffic," rather than through cross references to the definition of Section 251(b)(5) Traffic. *Id.*

Sprint argues that AT&T Illinois is attempting to use this definitional issue to make backdoor arguments about compensation issues, and points to AT&T Illinois' use of the term "Section 251(b)(5) Traffic" in its Pricing Sheets for support of this argument. Sprint IB at 104. As an initial matter, AT&T Illinois does not use the term "Section 251(b)(5) Traffic," but rather the term "Section 251(b)(5) Calls." DPL, Issue 70, AT&T Illinois Language. Thus, including a definition for "Section 251(b)(5) Traffic," as Sprint proposes, does not resolve the issue Sprint raises with respect to AT&T Illinois' use of the similar, but different, terminology.

Sprint identifies AT&T Illinois' use of the term "Section 251(b)(5) Traffic" in the pricing summary sheets as "an example" of AT&T Illinois' attempt to make backdoor arguments about compensation issues. Sprint IB at 104. The reference to this instance as "an example" is misleading to the extent it implies that AT&T Illinois has similar references to Section 251(b)(5) Traffic and/or Calls elsewhere in its proposed language. The use of "Section 251(b)(5) Calls" identified by Sprint is the only occurrence where AT&T Illinois makes such reference in its proposed language. Staff has recommended, with respect to Issue 70, that these summary pricing sheets be excluded from the agreement. Staff IB at 50. If the Commission accepts Staff's recommendation for Issue 70, then any concern that AT&T Illinois is attempting to rely on a Section 251(b)(5)

Traffic or Call definition to make "backdoor arguments" becomes moot as the contract will contain no reference to any such language proposed by AT&T Illinois.

Ironically, Staff's recommendation to delete Sprint's proposed inclusion of the definition of, and its use of, "Section 251(b)(5) Traffic" from the contract is precisely so that the contract will be clearer, and to avoid the very types of "backdoor arguments" Sprint alludes to in its Brief. Staff reiterates that the Interconnection Agreement will be clearer if aspects of either party's definition of "Section 251(b)(5) Traffic" or "Section 251(b)(5) Calls" are included directly in the definitions or language of the interconnection agreement rather than through cross references to the definition of Section 251(b)(5) Traffic.

ISSUE 6

Joint Party Description: What is the appropriate definition of "IntraMTA Traffic"?

Staff identified three substantive differences between Sprint's and AT&T Illinois' recommended definitions of "IntraMTA Traffic": (1) that AT&T Illinois proposes the use of the general term "traffic" in the definition, while Sprint proposes the use of the term "Section 251(b)(5) Traffic"; (2) that AT&T Illinois' definition does not specify whether IntraMTA traffic is exchanged directly or indirectly, while Sprint's proposed definition (through it's cross reference to "Section 251(b)(5) Traffic") does; and (3) that AT&T Illinois' language references traffic between the parties' respective end users while Sprint's language references traffic originated by one party and terminates on the other Party's network. Staff IB at 46-48. To resolve these differences, Staff recommended the following respective resolutions of these three issues: (1) use of the term "traffic" rather than "Section 251(b)(5) Traffic"; (2) specification that IntraMTA traffic includes both

traffic exchanged directly and traffic exchanged indirectly; and (3) use of language that declares IntraMTA traffic to be, in part, "traffic originated by one Party on its network from its End User and delivered to the other Party for termination on its network to its End User." *Id.*

In its Brief, AT&T Illinois, interprets Staff's proposed language as the following:

> "IntraMTA Traffic" means traffic that, at the beginning of the call, originates and terminates within the same MTA, and is originated by one Party on its network from its End User and delivered to the other Party for termination on its network to its End User.

AT&T IB at 94. This language, however, omits the second part of Staff's recommendation that would include specification that IntraMTA traffic includes both traffic exchanged directly and traffic exchanged indirectly. Thus Staff would recommend language stating:

> "IntraMTA Traffic" means traffic exchanged directly or traffic exchanged indirectly that, at the beginning of the call, originates and terminates within the same MTA, and is originated by one Party on its network from its End User and delivered to the other Party for termination on its network to its End User.

In its IB, Sprint expresses concern that AT&T Illinois' proposed language will exclude traffic that begins and ends within an MTA from the definition of "IntraMTA Traffic" if such traffic is carried at some point by an interexchange carrier, and that such result is contrary to the *CAF Order*. Sprint IB at 105. In specifying that "IntraMTA Traffic" includes both traffic exchanged directly and traffic exchanged indirectly, Staff's proposed resolution (as properly interpreted)

would include traffic exchanged indirectly through an interexchange carrier within the definition of IntraMTA traffic and would subject all such traffic to reciprocal compensation. Presumably this recommendation would resolve Sprint's expressed concerns.

ISSUE 37

Sprint Description of Issue 37: Should IntraMTA Traffic be exchanged on a bill and keep basis?

AT&T Illinois Description of Issue 37: Should IntraMTA Traffic be subject to bill and keep without exception?

As Staff explained in its IB, in this issue the parties are disputing which exceptions to bill and keep should be stated in the agreement. Staff IB at 48. In particular, the question is whether bill and keep should apply only to traffic that Sprint routes over Interconnection Trunks. Staff Ex. 4.0 at 22.

AT&T Illinois agrees that indirect exchange of IntraMTA traffic should be subject to bill and keep, and it further agrees that it will not charge Sprint for terminating that traffic, even when delivered by another carrier. However, it does not agree that such traffic is subject to this ICA. AT&T IB at 98-99. Sprint disagrees, and further argues that indirect delivery should be subject to bill and keep without limitation and so rejects AT&T Illinois' language. Sprint IB at 106. AT&T Illinois appears to recognize that it is Sprint's traffic and it seems incongruous for this ICA to not cover that traffic. Also, as discussed in Issue 36(b), Staff agrees with Sprint that a complete listing of exceptions to what is subject to bill and keep is not needed and confuses the issue. Staff Ex. 4.0 at 23. Staff, accordingly, still recommends that the Commission agree with Sprint that

indirect interconnection is subject to bill and keep under this ICA and adopt Sprint's proposed language at Attachment 2, 6.2.2.1. *Id*.

ISSUE 70

Joint Description of Issue 70: Which Party's' Pricing Sheets and rates should be adopted?

Sprint states in its initial brief that the parties have agreed there will be a summary pricing sheet as part of the ICA. Sprint IB at 107. Nonetheless, it is Staff's understanding that the content of the summary pricing sheet remains in dispute. In Staff's opinion, neither party has provided any convincing argument for keeping the pricing summary sheet in the ICA. If it is necessary to have a pricing summary sheet for the convenience of a party's contract personnel, this can be accomplished outside of the ICA, without creating redundancy in the ICA or creating the potential for future conflict. Staff IB at 49-50; Staff Ex. 2.0 at 94-95. Thus, unless the parties reach agreement on the content, Staff recommends that the summary pricing sheet be excluded from the ICA. Staff IB at 49-50; Staff Ex. 2.0 at 94-95.

VII. INTERMTA TRAFFIC

ISSUES 7 AND 8

Joint Party Description of Issue 7: What are the appropriate definitions related to "InterMTA Traffic"?

Sprint Description of Issue 8: What, if any, is the appropriate definition of "Switched Access Service"?

AT&T Description of Issue 8: What is the appropriate definition of "Switched Access Service"?

In its recent *CAF Order*, the FCC put in place a plan that phases out access charges and moves to a bill and keep regime over several years. Staff IB at 51; *CAF*

Order at ¶ 809, 810. In adopting this phase out, the FCC stated "a flash cut would entail significant market disruption to the detriment of consumers and carriers alike" and "the framework we adopt carefully balances the potential industry disruption for both payers and recipients of intercarrier compensation as we transition to a new intercarrier compensation regime more broadly." *CAF Order* at ¶ 809, 810. In direct conflict with this FCC transition, Sprint's proposal would no longer subject InterMTA traffic to access charges under AT&T Illinois' tariffs, but rather would include InterMTA traffic within the Interconnection Agreement, and flash cut all of its traffic to bill and keep. *Id.*; Sprint IB at 116-117. Sprint's proposal is, therefore, inconsistent with the FCC's *CAF Order*.

Moreover, Sprint's argument to support its proposal (Sprint alleges that the FCC findings in the 2008 Wireless Toll Declaratory Order stand for the principle that nationwide flat-rated service plans are not toll plans and, therefore, are not subject to switched access intercarrier compensation rates) should be accorded no weight because, as Mr. Felton acknowledges, the FCC specifically stated:

> The discussion of "toll services," "toll traffic," and "toll revenues" in this order pertains solely to universal service contribution obligations. Nothing in this order is intended to address intercarrier compensation and other issues raised in CC Docket No. 01-92 or other pending proceedings.

Sprint IB at 113 – 114; Sprint Ex. 2.0 at 41 (*citing Wireless Toll Declaratory Order,* 23 FCC Rcd at 1411, 1416 n.29). Clearly, contrary to Sprint's assertions otherwise, the FCC's Order was never intended to address intercarrier compensation issues such as those before the Commission in this proceeding. Staff IB at 51-52; *Wireless Toll Declaratory Order,* 23 FCC Rcd at 1411, 1416 n.29. Sprint's assertion that statements in the FCC's *CAF Order* stand for the principle that wireless InterMTA traffic is subject to bill and keep and not access charges relies on statements made by

the FCC with respect to VoIP-PSTN traffic and not to CMRS-PSTN traffic, and should be similarly given no weight. Sprint IB at 53. As explained by Staff, the circumstances surrounding VoIP-PSTN traffic did not, when the FCC was making its determinations, match those surrounding CMRS-PSTN traffic. *Id.* Unlike CMRS-PSTN traffic, there was no intercarrier compensation status quo for the FCC to transition from with respect to VoIP-PSTN traffic. *Id.* InterMTA traffic has traditionally been exchanged outside Interconnection Agreements through switched access tariffs, and incumbent local exchange carriers have been recipients of, and wireless carriers have been payers of, switched access charges with respect to InterMTA traffic. Staff IB at 53. Flash cutting away from these charges would be flatly inconsistent with the access charge transition plan adopted in the FCC's *CAF Order*.

For all of the reasons above and in Staff's IB, the Commission should reject Sprint's attempt to include definitions in the interconnection agreement that nullify the InterMTA rule, and result in the application of reciprocal compensation rates to all of Sprint's InterMTA traffic exchanged directly between the parties. Staff IB at 55. Instead the Commission should adopt AT&T Illinois' language for Issues 7 and 8, which is consistent with the preservation of the IntraMTA rule and the application of switched access charges to InterMTA LEC-CMRS traffic. DPL, Issue 7, AT&T Illinois Language; DPL, Issue 8, AT&T Illinois Language; *see CAF Order* at ¶ 1004.

ISSUE 36

> *Sprint Description of Issue 36: What categories of Authorized Services traffic are subject to compensation between the Parties?*

AT&T Illinois Description of Issue 36(a): Should the ICA include compensation terms for Sprint's term "Non-Toll InterMTA Traffic"?

AT&T Illinois Description of Issue 36(b): What is the appropriate compensation for mobile-to-land InterMTA Traffic?

As Staff explained in its IB, the ICA governs how AT&T Illinois and Sprint will exchange Authorized Services traffic, and specifies the types of traffic that are subject to it, and what, if any, compensation should be paid for that traffic. Staff IB at 56; Staff Ex. 4.0 at 19. Sprint proposes five types of Authorized Services traffic: (1) IntraMTA; (2) Non-Toll InterMTA; (3) Toll InterMTA; (4) Transit Service; and (5) VoIP-PSTN Traffic. Sprint Ex. 2.0 at 52. Sprint differentiates between "Non-Toll" and "Toll" InterMTA Traffic, arguing that "Non-Toll InterMTA Traffic" should be subject to bill and keep. Staff Ex. 4.0 at 19.

Sprint uses the definition of Toll traffic to argue that bill and keep applies to non-Toll InterMTA traffic. Sprint IB at 107-116. As noted in Staff's IB, and indeed in AT&T Illinois' IB, this distinction ignores the plain meaning of the CAF Order in several locations. First, there is a section entitled *IntraMTA Rule* that mandates that IntraMTA calls are non-access traffic. *CAF Order* at ¶ 1003-1008. And the *CAF Order* also mandates that non-access traffic between CMRS providers and ILECs is subject to bill and keep. *Id.* at ¶ 978. Second, in that same order, the FCC clearly states that it refrains from a flash cut ending to the access regime. *Id.* at ¶ 995. In fact, it expends considerable effort and energy on its plan to reform the access regime. Given the FCC's previous regime and approach to intercarrier compensation between CMRS providers and ILECs, it defies all logic to claim that the FCC intended to exempt CMRS providers from paying access charges to terminate traffic to ILECs. Sprint

acknowledges that this is the effective result of its proposed language, when Sprint highlights the *de minimus* amount of Toll InterMTA traffic that its customers originate.

AT&T Illinois disaggregates Issue 36 into two parts. Issue 36(a) defines the traffic types that are governed by the ICA. Att. 2, 6.1.1 for ATT Illinois and Att. 2, 6.2.1 for Sprint. Issue 36(b) lists exclusions to traffic that is subject to the ICA according to AT&T Illinois. Att. 2, 6.2.3 and 6.2.3.1 and 6.2.3.1.1 through 6.2.3.1.6. In its IB, Staff concluded that AT&T Illinois' language was the best way to categorize traffic, since it best comported with the *CAF Order*. Staff IB at 57-58. And Staff also agreed with Sprint that AT&T Illinois' proposed exclusions were unnecessary and potentially confusing. *Id.* Neither party offered an argument or evidence that, in Staff's opinion, overcame Staff's arguments in its IB.

Accordingly, Staff continues to recommend that the Commission reject Sprint's proposed InterMTA distinctions. Likewise, the Commission should reject Sprint's proposed definitions at Attachment 2, 6.2.1. Instead, it should adopt the definitions as proposed by AT&T Illinois at Attachment 2, 6.1.1. Staff IB at 57-58. Staff, however, posits that, with respect to the AT&T Illinois' proposed exclusions at Attachment 2, 6.2.3.1.1 through 6.2.3.1.6, Sprint's arguments are on point. *Id*. To the extent certain types of traffic are exempt from bill and keep is even relevant to the ICA, those types of traffic are either discussed elsewhere in the agreement or the inclusion of that type of traffic in a bill and keep exemption list would create some confusion. *Id.*

ISSUE 39 AND 40

> *Sprint Description of Issue 39: What is the appropriate compensation for Non-Toll InterMTA Traffic?*

AT&T Illinois Description of Issue 39(a): Should the ICA include compensation terms for Sprint's term 'Non-Toll InterMTA Traffic?

AT&T Illinois Description of Issue 39(b): What is the appropriate compensation for mobile-to-land InterMTA Traffic?

AT&T Illinois Description of Issue 39(c): Should the ICA include terms for AT&T to estimate the percentage of mobile-to-land InterMTA Traffic, if any, improperly routed over trunks obtained pursuant to the ICA and bill Sprint for terminating access in accordance with that percentage?

AT&T Illinois Description of Issue 39(d): Should the ICA obligate Sprint to provide JIP in the call records for its originating IntraMTA and InterMTA Traffic or permit AT&T to use alternate methods to determine jurisdiction?

Sprint Description of Issue 40: What is the appropriate compensation for Toll InterMTA Traffic?

AT&T Illinois Description of Issue 40(a): Should the ICA include compensation terms for Sprint's term "Toll InterMTA Traffic"?

AT&T Illinois Description of Issue 40(b): What is the appropriate compensation for mobile-to-land InterMTA Traffic?

As in Issue 36, the Commission's decision is largely determined by whether it is persuaded by Sprint's attempt to distinguish between Toll and non-Toll InterMTA traffic. If, as AT&T Illinois and Staff argue, it is not, then the appropriate compensation for both Toll and non-Toll InterMTA traffic should refer to the access tariffs. Similarly, in AT&T Illinois' formulation of the issues, Sprint should be obligated to follow industry practice to allow AT&T Illinois to accurately estimate the amount of InterMTA traffic sent over Interconnection Trunks. Staff IB at 59-60; AT&T IB at 112-113. Therefore, Staff's recommendation remains the same, which is that the Commission should reject Sprint's proposed language, and accept AT&T Illinois' language for Issues 39 and 40.

ISSUE 41

Sprint Description of Issue 41: Is either Party entitled to collect compensation on any of its originated traffic? If so, what originated traffic is subject to such compensation and at what rate?

AT&T Illinois Description of Issue 41: Is AT&T entitled to collect switched access charges on its originating InterMTA traffic? If so, at what rate?

As Staff explained in its IB, AT&T Illinois' position is that it should be able to charge Sprint originating access charges for InterMTA calls originated by its customers to Sprint customers. Staff IB at 60. Sprint, on the other hand, maintains that such calls should not be subject to access charges.

AT&T Illinois notes that some InterMTA calls are originated by its landline customers to Sprint customers who are normally in the same MTA, but whose phone at the time of the call is not in the same MTA. Since AT&T Illinois does not know that it is an InterMTA call, it routes the call over Interconnection Trunks. But in its view, all InterMTA traffic is Toll Traffic. It concludes that this is originating access traffic. Relying on its current ICA with Sprint and based upon its interpretation of the Local Competition Order, AT&T Illinois holds that it is due originating access charges from Sprint based on the estimated amount. AT&T IB at 114-117.

Staff, on the other hand, argues that Sprint should not have to pay originating access charges. In this case, as Staff witness Rearden argued, AT&T Illinois is the 'pseudo-IXC', as its customer initiates the call and pays AT&T Illinois for the service. The calling party is the AT&T Illinois customer. By that logic, one could argue that AT&T Illinois should pay Sprint for terminating the call. Staff IB at 60-62.

Consequently, Staff's recommendation remains the same, which is that the Commission should adopt Sprint's proposed language because it better comports with

how Sprint-originated InterMTA Traffic is classified and compensated than AT&T Illinois' proposed language. *Id.*

VIII. MISCELLANEOUS

ISSUE 13

AT&T Illinois Description of Issue 13(a): Should the definition of Interconnection be based on both Part 51 and Part 20 of the FCC's rules?

AT&T Illinois Description of Issue 13(b): Should there be a distinction between "Interconnection", as defined in 47 C.F.R. Section 51.5, and "interconnection"?

Sprint Description of Issue 13: Should this Agreement include provisions regarding indirect interconnection?

Sprint argues that the definition of the term "Interconnection" should be complete and accurate, and that, therefore, if the definition refers to FCC rules at all, it should refer to both the interconnection rules under Part 20 pertaining to CMRS providers, as well as those under Part 51 pertaining to telecommunications carriers. Sprint IB at 120. Staff agrees that the definition should be complete and accurate. Whether a definition of the term "Interconnection" is complete and accurate, however, depends on the intended use of the term. Sprint's overly inclusive definition appears to ignore the plain language of the federal regulations and contradict the clear purpose of those applicable rules.

As Staff pointed out, the FCC has concluded that the term "interconnection" as used under Section 251(c)(2) is "the physical linking of two networks for the mutual exchange of traffic" or as provided in 47 C.F.R. §51.5. Staff Ex. 2.0 at 4. As Staff understands it, AT&T intends for the definition of the term "Interconnection" to refer to Section 251(c)(2) interconnection and thus, is complete and accurate. *Id.* at 5-6.

Sprint asserts that "Ms. Liu repeatedly states that Attachment 2 of the ICA does,

in fact, cover Interconnection Facilities that are subject to both Part 51 and Part 20 rules." Sprint IB at 121. In painting this broad brushed assessment, Sprint neglects to capture the detailed analysis with which Dr. Liu explained that Sprint is not entitled to cost-based rates for transmission facilities used for non-Section 251(c)(2) interconnection (i.e. interconnection not for the mutual exchange of traffic). Staff Ex. 2.0 at 6-7. Therefore, a more critical analysis is required here than that provided by Sprint.

If the term "Interconnection" is intended to refer to or identify a specific type of interconnection for which an incumbent LEC (AT&T in this case) must make transmission facilities available at cost-based rates under Section 251(c)(2), then the definition designed to achieve such purpose is the appropriate one and should be adopted. Staff IB at 63; Staff Ex. 2.0 at 5. Staff believes that AT&T's definition of "Interconnection" referencing 47 C.F.R. §51.5 (but not 47 C.F.R. §20.3) is consistent with the manner in which it intends to use of the term under the circumstances of this case.

Since interconnection as provided in 47 C.F.R. §20.3 includes, but is not limited to, interconnection as provided in 47 C.F.R. §51.5, Staff Ex. 2.0 at 3, Sprint's definition of the term "Interconnection" referencing 47 C.F.R. §20.3 is inappropriate for the purpose of describing Section 251(c)(2) interconnection for which it is entitled to obtain transmission facilities at cost-based rates. Staff IB at 63; Staff Ex. 2.0 at 8. As AT&T pointed out in its initial brief and as AT&T witness Pellerin testified, "the fact that in certain circumstances carriers are subject to both Parts 20 and 51 of the FCC's rules does not logically mean that the Part 20 rules apply to a section 251/252 ICA." AT&T IB at 14 (*citing* Pellerin Rebuttal at 19-20). Staff agrees.

Staff observes that Attachment 2 of the parties' ICA establishes provisions governing Section 251(c)(2) interconnection as well as provisions governing non-Section 251(c)(2) interconnection (e.g., for the purposes of delivering traffic to/from IXCs, to the E911 Selective Router to be routed to the Public Safety Answering Points ("PSAP"), and to/from a third party, etc.). Staff IB at 64; Staff Ex. 2.0 at 9. Sprint is not, however, entitled to cost-based rates for transmission facilities used for non-Section 251(c)(2) interconnection (i.e., not for the mutual exchange of traffic). Staff IB at 64; Staff Ex. 2.0 at 7. Accordingly, Staff recommends that the term "interconnection" (with a lower case "i"), instead of the term "Interconnection" (with an upper case "I"), be used in Attachment 2 Section 1.1. *Id.*

ISSUE 50 AND 51(a)

> *Joint Party Description of Issue 50: Should the definition of "Cash Deposit" and "Letter of Credit" be Party neutral?*
>
> *AT&T Description of Issue 51(a): Should the deposit requirement apply to both parties or only to the requesting carrier?*

Staff believes that both parties (both AT&T Illinois and Sprint) should be subject to the deposit, proportionally, depending on the amount of anticipated billing. Staff IB at 64; Staff Ex. 3.0 at 9. Each party to the ICA should be subject to the same reasonable protections afforded by deposits, including parties other than AT&T Illinois and Sprint in the event that AT&T Illinois contracts with other parties using this ICA. Staff IB at 64; Staff Ex. 3.0 at 5. Furthermore, AT&T Illinois may be a credit risk in the future, as AT&T Illinois witness Mr. Greenlaw admitted in cross examination, and Sprint (or another party) may need the protection afforded by a deposit in the future. Staff IB at 65; Staff Ex. 3.0 at 6; *Tr.* at 675; Sprint IB at 123. AT&T Illinois argued that only Sprint should be

subject to a deposit requirement, but in its IB, stated that it "would not object to having [deposit] provisions apply to both parties" if the Commission approves AT&T Illinois' proposed deposit language. AT&T Illinois Ex. 3.0 at 10; AT&T IB at 151. Nonetheless, AT&T Illinois witness Mr. Greenlaw asserted that it would be preferable for the deposit requirement to be reciprocal over incomprehensive, incomplete deposit terms and conditions. *Tr.* at 676.

The proposed deposit language is discussed more properly under Issue 51, and Staff will address the language in that section of this brief. However, regardless of the specific deposit language adopted by the Commission in this ICA, Staff believes the deposit language should apply to both parties. Staff IB at 64-65. AT&T Illinois has admitted the potential for its creditworthiness to change, and just as it seeks protection from the possibility of a change in Sprint's creditworthiness, it is appropriate for Sprint to have the same protection. Tr. at 675; Staff IB at 64-65; Staff Ex. 3.0 at 6 (MCI Arb. Decision at 15-16 (*holding* deposit requirements are reasonable as long as they are not set at disproportionately high levels)). Therefore, the Commission should adopt Staff's proposal that the deposit language should apply to both parties under the ICA.

Similarly, Staff believes that Sprint should not be required to use the AT&T Illinois letter of credit form, but should be able to use any commercially reasonable letter of credit form. Staff IB at 65-66. AT&T Illinois argues that allowing any commercially reasonable form allows Sprint to choose a form that is not commercially reasonable. AT&T IB at 162. Instead, AT&T Illinois states that its form is commercially reasonable, and that it should be required to avoid use of forms that are not commercially reasonable. *Id.* However, as AT&T Illinois points out, neither Staff nor Sprint have

reviewed AT&T Illinois' letter of credit form. *Id.* AT&T Illinois' assertion that its form is commercially reasonable has the same problems with Sprint asserting any particular letter of credit form is commercially reasonable: the form may not be commercially reasonable. *See* AT&T Illinois Ex. 3.1 at 3. Therefore, AT&T Illinois' proposal does not avoid this potential issue. Regardless, however, whether a particular form is commercially reasonable is a question of law and fact which can be addressed easily should the issue ever arise, a possibility which should not foreclose a party's ability to use any letter of credit form from a financial institution other than that supplied by AT&T Illinois. As such, Staff recommends the Commission allow Sprint to use any commercially reasonable letter of credit form from any financial institution. Staff IB at 65.

ISSUE 51/51(b)/51(c)/51(d)

> *Sprint Description of Issue 51: What assurance of payment language should be included in the Agreement?*
>
> *AT&T Illinois Description of Issue 51(b): Should the ICA provide that no deposit requirement is required as of the Effective Date based upon Sprint's and AT&T's dealings with each other under their previous interconnection agreements?*
>
> *AT&T Illinois Description of Issue 51(c); Under what circumstances should a deposit be required and what should be the amount of the deposit?*
>
> *AT&T Illinois Description of Issue 51(d): What other terms and conditions governing deposits should be included in the ICA?*

Staff proposed a deposit requirement should be triggered if a party had less than 12 months' consecutive prompt payment history in its testimony. Staff Ex. 3.0 at 17-18. On cross examination, Staff reflected that additional triggers should be included in the ICA; specifically, if (1) the Billed Party files for Bankruptcy; or (2) the Billed Party publicly declares it is unable to pay its debts as they come due, at any time the ICA is effective, including the Effective Date. *Tr.* at 936-937. Staff contemplated the payment history to

include any and all payment history between the two specific parties, regardless of whether that occurred under this ICA or a different agreement.

Despite assurances from AT&T Illinois that it would not seek a deposit from Sprint by asserting less than 12 months' consecutive prompt payment history under this ICA, Sprint argues that AT&T Illinois may do just that, and therefore, the deposit requirement should not apply on the Effective Date of this ICA. Sprint IB at 124; *Tr.* at 62. This fear seems arbitrary and unfounded: first, AT&T Illinois has pledged it would consider payment history between the two parties outside this particular ICA. *Tr.* at 62. Second, if Sprint legitimately has this concern regarding the Effective Date of the ICA, this should be of concern for the first 12 months under this ICA. Sprint IB at 124. However, Sprint never asserts this is the case.

Nonetheless, Sprint states it would accept Staff's recommendation if the ICA provided "that the prior payment history between Sprint and AT&T before this ICA becomes effective would also be determinative of whether any deposit could be required as of the ICA's effective date." *Id.* at 125. Staff supports this clarification, and recommends the Commission adopt both its proposed language and this clarification regarding the deposit requirement trigger. However, Staff notes that neither proposed language provided by Sprint on this issue would put these terms into effect. *See id.* at 126, 127.

Furthermore, Sprint purports to suggest new language regarding "the amount of the deposit" which actually touches on many issues related to the deposit requirement, including the "need for" the deposit. *Id.* at 125. Sprint proposes in this language to use commercially reasonable factors to determine both "the need for and amount of any

Deposit." *Id.* Sprint goes on to list some factors that may be considered, including but not limited to: "payment history, number of years in business, history or service with Billing Party, bankruptcy history, current account treatment status and financial statement analysis." *Id.* While Sprint adopts many of Staff's recommendations for the deposit triggers, this proposal makes the deposit triggers less clear, adds an additional requirement that the Billing Party provide written explanation justifying the deposit request, and allows for a delayed response from the Billed Party (either satisfy the deposit requirement within 30 days of the request or justification or invoke the Dispute Resolution if the Billed Party disagrees with the request). *Id.* These additional hurdles are inappropriate as they would effectively leave the Billing Party without the proper protections afforded by reasonable deposit requirements. *MCI Arb. Decision* at 15-16. Moreover, the deposit requirement triggers and amounts should be clear to both the Billed Party and the Billing Party from the outset of the ICA, but under Sprint's proposed language, neither party would ever know the triggers or the amount of a deposit requirement at any particular time under the ICA. Staff recommends the Commission reject Sprint's proposed language, and adopt Staff's recommendation that the deposit requirement be triggered when (1) the Billed Party has fewer than 12 consecutive months' prompt payment to the Billed Party; (2) the Billed Party files for Bankruptcy; or (3) the Billed Party publicly declares it is unable to pay its debts as they come due, at any time the ICA is effective, including the Effective Date. Staff IB at 68; *see* Sprint IB at 125.

Next, Staff recommends that the amount of the deposit requirement should be equal to three months' anticipated billing for each party. Staff IB at 68. As discussed in

part above, Sprint proposes language that would require examination of commercially reasonable factors each and every time a deposit requirement may be requested, and further limits deposit amounts to no more than the lesser of "the Billed Party's total monthly billing under this Agreement for one month, or fifty-thousand dollars ($50,000)." Sprint IB at 125. Furthermore, Sprint argues that the three months' anticipated billing suggested by Staff and a similar suggestion by AT&T Illinois are excessive. *Id.* Additionally, Sprint argues in the alternative, that the amount of the deposit should be "the greater of one months' billing under the ICA or the undisputed past due amount at issue." *Id.* at 126.

Again, Staff believes the deposit amount, when triggered, should be clear to both the Billing Party and the Billed Party at the outset of the ICA, and recommends the Commission reject Sprint's proposed language to the contrary. *See id.* at 125. Furthermore, Staff finds three months' anticipated billing for that party to be well within reason, and notes the Commission rules allow for up to 33% of annual billing to be the deposit requirement for business services. Sprint Ex. 4.0 at 63; Staff Ex. 3.0 at 19; 83 Ill. Admin. Code § 735.120(a). Finally, the suggestion that a deposit requirement should be limited by the amount of "undisputed past due amounts" undermines the purpose of a deposit, protection against non-payment, which the Commission has previously found to be proper. *MCI Arb. Decision* at 15-16. Sprint's proposed deposit amount language should be rejected in total by the Commission.

Finally, as to the return of any deposit amount, Staff recommends the Commission adopt a return of deposit requirement when the Billed Party has achieved 12 consecutive months' prompt payment history with the Billing Party. Staff IB at 69.

While Staff did not address which 12 consecutive months' prompt payment history should be used in its IB, Staff recommends that this be dependent on the deposit requirement trigger. In particular, the most recent 12 billing months should be used if the deposit was triggered by less than 12 months' consecutive prompt payment history, and the 12 months beginning after the month a Party files for Bankruptcy or publicly declares it is unable to pay its debts as they come due. This comports with previous Commission findings regarding the appropriate circumstances under which a deposit may be required, and is the logical accompanying policy for return of that deposit under each such trigger. Level 3 Arb. Decision at 15; MCI Arb. Decision at 15.

ISSUE 52

Joint Description: Is it appropriate to include good faith disputes in the definitions of "Non-Paying Party," or "Unpaid Charges"?

Staff recommends the Commission should adopt Sprint's proposal as to the definition of both the term "Non-Paying Party" and the term "Unpaid Charge." Staff IB at 69. To the extent AT&T Illinois argues adopting Sprint's proposed definitions of these terms would render "an agreed section" of the ICA meaningless, Staff believes and reiterates here that the section is not actually agreed. *Id.*; *see* AT&T Illinois Ex. 3.0 at 26. Both the term "Non-Paying Party" and the term "Unpaid Charge" area are used in that section, but neither term is agreed; both AT&T Illinois and Sprint agree that the definitions of these terms are at issue in this arbitration. Staff IB at 69-70; AT&T Illinois Ex. 3.0 at 25-29; Sprint Ex. 1.0 at 55-57. The definition of these terms will affect the meaning of that section materially, and therefore, the parties should not be considered to have agreed to the section. Staff IB at 70.

Additionally, Staff believes there is no need to refer to a party as a "Disputing Party" rather than a "Billed Party" if that party wishes to dispute a bill. *Id.* While Sprint argues use of the term "Disputing Party" clarifies the fact that the party has certain obligations it must meet before filing its dispute, Staff believes there is no need for this "clarification." *See* Sprint IB at 130. Sprint uses the only example of these obligations the following: "paying all undisputed amounts to the Billing Party on or before the Bill Due Date." *Id.* Staff agrees that this is an obligation of a Billed Party, but does not see any need for clarifying that a party must pay undisputed amounts even if there are separate disputed amounts, and similarly does not see a need to refer to a party making a billing dispute as a "Disputing Party" rather than simply a "Billed Party." Staff IB at 70.

ISSUE 53

> *AT&T Illinois Description of Issue 53(a): Should a party that disputes a bill be required to pay the disputed amount into an interest bearing escrow account pending resolution of the dispute?*
>
> *AT&T Illinois Description of Issue 53(b): Should a Party that disputes a bill be required to use the preferred form or method of the Billing Party to communicate the dispute to the Billing Party?*
>
> *AT&T Illinois Description of Issue 53(c): Should the ICA refer to the Party that disputes and does not pay a bill as the "Disputing Party" or the "Non-Paying Party?"*
>
> *Sprint Description of Issue 53: Should the Billed Party be required to pre-pay good faith disputed amounts into an escrow account pending resolution of the good faith dispute?*

Staff believes parties should not be required to escrow money on disputed amounts. Ultimately, the Commission has found escrow requirements under ICAs for good faith disputes to be unreasonable, and the Commission should reject the proposed escrow requirement under this ICA. Staff IB at 71; TDS Metrocom, Inc., Petition for

Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Illinois Bell Telephone Company d/b/a Ameritech Illinois Pursuant to Section 252(b) of the Telecommunications Act of 1996, ICC Docket No. 01-0338, Arbitration Decision (Aug. 8, 2001) ("TDS Arb. Decision") at 6; MCI Arb. Decision at 30. However, AT&T Illinois attempts to argue that the Commission has allowed parties "to escrow disputed amounts related to so-called High-Cap EELs pending resolution of the dispute." AT&T IB at 170-71. However, AT&T Illinois fails to recognize that this was in a very different context: the situation contemplated in that docket was at the point after an independent auditor found that a requesting carrier failed to meet the mandatory EELs criteria. *Access One* at 145. In that case, there would be a difference in payments paid and the rates and charges the CLEC would have owed without meeting the EELs criteria. *Id.* The question was whether that amount should be placed in escrow if the requesting carrier disputed the auditor's findings that it failed to meet the EELs criteria, it did not involve "disputed amounts" as contemplated here. *Id.* The procedural differences presented in that case as compared to the situation contemplated by AT&T Illinois proposing an escrow requirement are quite important: in *Access One*, escrow was required only *after* an independent auditor had made a finding which implicated an amount owed (although the requesting party disputed the finding), whereas under the ICA, AT&T Illinois would require any disputed amounts be escrowed *pending* investigation and resolution of the dispute. *Id.*; AT&T IB at 169-170.

Staff will refrain from making further recommendations on Issue 53/53(b) until Staff discusses that issue with regard to Issue 60, which is substantially similar to that for Issue 53/53(b).

Finally, Staff recommends that the Commission should reject both Sprint's and AT&T Illinois' arguments with regard to Issue 53/53(c). Staff IB at 72. For the reasons already described by Staff in its IB, if a party disputes a bill in good faith and requests resolution with the Billing Party, the status of the Billed Party should not change. *Id.*

ISSUE 57

Joint Description: Under what circumstances may a Party disconnect the other Party for nonpayment, and what terms should govern such disconnection?

Staff recommends that the Commission allow AT&T Illinois to disconnect all unpaid and undisputed services under the ICA for non-payment without prior approval of the Commission. Staff IB at 73. However, Staff also recommends that such disconnection should be for only those services for which payment has not been made. Staff Ex. 3.0 at 33.

Sprint argues that a "notice rule establishes that the Commission will review a disconnection before it occurs." Sprint IB at 135 (emphasis in original). While Staff is not entirely clear what Sprint is referring to when it says "notice rule," Staff presumes Sprint is referring to either Staff's proposal that AT&T Illinois provide the Commission with notification at the same time it notifies Sprint of disconnection for non-payment of undisputed amounts or 83 Ill. Admin. Code § 731.905, which Sprint references in its IB. Sprint IB at 134; *see* Staff IB at 73. In either case, however, the outcome is the same: nothing in either the Administrative Rules or Staff's proposal suggests the Commission must investigate, let alone pre-approve, a disconnection when it receives these notifications. Staff IB at 73. Staff's suggestion was not meant to imply otherwise. *Id.* Rather, Staff proposed a notification requirement to merely keep the Commission

apprised of each party's provided services. *Id.* More specifically, Staff testified that the Commission should always be informed of any disconnection situations, regardless of the reason(s), as the situation requires as a matter of public interest. *Id.* (*citing* Staff Ex. 3.0 at 35). Moreover, Sprint's proposal for disconnection of the services only after Commission approval is unnecessary. Staff IB at 73.

Staff testified that this scenario is unacceptable as it calls for the insertion of the Commission into what is essentially a common business dealing and process between the Parties involving bill collection and resolution of what amounts to an accounts receivable situation. *Id.* Although the Commission may preside over these issues when necessary, it need not pre-approve disconnection. *Id.*

ISSUE 58

Joint Description: Should the period of time in which the Billed Party must remit payment in response to a Discontinuance Notice be forty-five (45) or fifteen (15) days?

Sprint argues that 83 Ill. Admin. Code § 731.905 applies to disconnection for non-payment of undisputed amounts under this ICA, and would prohibit AT&T Illinois from disconnecting services with less than 35 days' prior written notice to the Commission and Sprint, absent Sprint agreeing otherwise. Sprint IB at 134; 83 Ill. Admin. Code § 731.905 (West 2012). Staff argued 15 days' notice was sufficient in its IB, but concedes that Sprint is correct in applying this section of the Administrative Code to this issue. Staff IB at 74; Sprint IB at 134; 83 Ill. Admin. Code § 731.905. This rule was established in ICC Docket No. 01-0539, and in that docket Staff stated that what would become 83 Ill. Admin. Code § 731.905 "addresses the disconnection of a wholesale service for any reason, and provides a minimal notice requirement on the

provisioning carrier." Reply Comments of the Staff of the Illinois Commerce Commission, Docket No. 01-0539 at 20. The minimum 35 days' notice was required because "wholesale disconnection involves three parties (requesting carrier, provisioning carrier, and end user customer) rather than two parties (retail carrier and end user customer) . . . [and i]n the wholesale context, the end user customer is a completely innocent third party." *Id.* Furthermore, the 35 days' notice provides sufficient time for the requesting carrier to provide the minimum required notice pursuant to Section 13-406 of the Public Utilities Act. *See* 220 ILCS 13-406. Therefore, Staff revises its recommendation to the Commission to comply with 83 Ill. Admin. Code § 731.905, and recommends that at least 35 days' notice should be provided to Sprint and the Commission before AT&T Illinois disconnects for non-payment.

ISSUE 60

AT&T Description: Should the ICA require the Disputing Party to use the Billing Party's preferred form in order to dispute a bill?

Sprint Description: Can a Party require that its form be used for a billing dispute to be valid?

Staff recommends that the Commission find that the Billed party should be allowed to use its own dispute form to dispute billing charges under the ICA, as long as the Billed Party is provided with sufficient information necessary to identify and process a billing dispute, no matter the format of the billing dispute notification. Staff IB at 75. The substantive rights of parties should not become subservient to a formatting issue. *Id.* Furthermore, Staff believes the Billing Party should bear the burden of costs associated with its internal processing of billing dispute notifications. *Id.*

At no point while the record was open did AT&T Illinois argue that Sprint failed to provide the necessary information in its current dispute resolution form, but it seems to do so in its IB. AT&T IB at 182. The Commission should ignore these arguments as improper because they are not based on any record evidence. *See id.* (*stating* "AT&T Illinois must . . . populate the missing and incomplete data"). Furthermore, to the extent AT&T Illinois compares itself to a credit card company, an airline, or a hospital, these comparisons are inappropriate. AT&T IB at 183. The record does not contain any evidence as to the dispute resolution of any credit card company, airline, or hospital. To the extent AT&T Illinois is now requesting the Commission to consider evidence that is not in the record, the request is improper, and should be denied. *See* 83 Ill. Adm. Code § 200.610.

IX. CONCLUSION

WHEREFORE, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in their entirety consistent with the arguments set forth herein.

Respectfully submitted,

_____

MICHAEL J. LANNON
CHRISTINE F. ERICSON
KIMBERLY J. SWAN
Illinois Commerce Commission
Office of the General Counsel
160 N. LaSalle Street, Ste. C-800
Chicago, Illinois 60601
Phone: (312) 793-2877
Fax: (312) 793-1556
Email: mlannon@icc.illinios.gov
cericson@icc.illinois.gov

kswan@icc.illinois.gov

April 2, 2013

Counsel for the Staff of the
Illinois Commerce Commission